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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 IN RE:

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13 BofI HOLDING, INC. SHAREHOLDER  
14 LITIGATION  
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Case No.: 3:15-cv-02722-GPC-KSC

**ORDER GRANTING LEAVE TO  
AMEND**

**[Dkt. No. 41]**

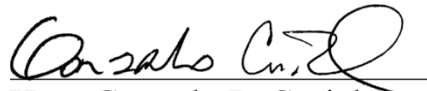
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17 On March 1, 2017, the Court granted Defendants' motion to dismiss Plaintiffs'  
18 Consolidated Verified Shareholder Derivative Complaint ("CSC") for failing to plead  
19 demand futility with the requisite particularity. *See generally* Dkt. No. 54. The Court did  
20 not, however, rule on whether the motion would be granted with or without prejudice at  
21 that time. *See id.* Instead, it issued an Order to Show Cause ("OSC") why Plaintiffs'  
22 complaint should not be dismissed with prejudice due to the futility of future demand  
23 allegations. *Id.*

24 Plaintiffs responded to the Court's OSC on March 17, 2017 by filing an amended  
25 complaint, attached as an exhibit to a memorandum of law explaining how the amended  
26 complaint would cure the deficiencies identified in the Court's March 1, 2017 order. *See*  
27 Dkt. No. 60. Defendants, in turn, responded by arguing that the amended complaint  
28 would not, in fact, cure the pleading deficiencies. *See* Dkt. No. 61.

1 In light of the parties' responses to the OSC, the Court concludes that it would not  
2 be futile to allow Plaintiffs leave to amend their complaint. Rule 15 provides that leave  
3 to amend should be freely granted when justice so requires. Fed. R. Civ. P. 15(a)(2).  
4 Accordingly, when a court dismisses a complaint for failure to state a claim, "leave to  
5 amend should be granted unless the court determines that the allegation of other facts  
6 consistent with the challenged pleading could not possibly cure the deficiency." *DeSoto*  
7 *v. Yellow Freight Sys., Inc.*, 957 F.2d 655, 658 (9th Cir. 1992) (internal citations omitted).  
8 Here, given that Plaintiffs have demonstrated that the composition of BofI's Board of  
9 Directors has changed, the Court concludes that an amended pleading has the potential to  
10 cure the deficiencies in the CSC. *See Braddock v. Zimmerman*, 906 A.2d 776, 785-86  
11 (Del. 2006) (concluding that courts should assess an amended complaint's demand  
12 futility allegations "with regard to the board that was in place at the time that amendment  
13 was filed"). Accordingly, the Court **GRANTS** Plaintiffs leave to amend the CSC. Any  
14 amended complaint shall be filed on or before **Friday, April 14, 2017**.

15 **IT IS SO ORDERED.**

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17 Dated: April 10, 2017

  
18 Hon. Gonzalo P. Curiel  
19 United States District Judge  
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